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[For additional information on the role of "arbiters" in the settlement of disputes, see Category 627.]

/199 cont./

671 the Church is always there to excommunicate a traitor.
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[188] Thus we can say that Turkish law, public or private, exerted only a very relative influence on our herders.

671 Public law of privileged communities does not concern the Sarakatsani,
627 for they have never been part of these. When commercial or simple
692 economic transactions cause differences they can be solved by recourse to arbiters.

As we shall see, the Sarakatsani very much prefer, above all others, this type of legal process which goes back to a very distant past. (5)

[113] 5. See J. Walter Jones: The Law and Legal Theory of the Greeks /cited in English/, pp. 130-133, citing also Harell: Public Arbitration in Athenian Law /cited in English/, pp. 1-42.

671 If, in spite of all, they are obliged to apply to local Hellenic
199 justice, customs remain valid before the latter. Sarakatsani customs, too, can thus be enforced.

Now it is certain that the Sarakatsani need comply only occasionally with local laws. If one remembers, in particular, that the disagreements brought about by transactions with the outside appear only rarely, that the sector "trade" covers only a very small part of Sarakatsani economic life, and finally that this sector touches only very superficially their social life in general, one will understand that even in cases where the law, either ecclesiastical or local, ultimately intervenes, this intervention cannot cause any important repercussions in the social sphere.

671 It follows therefore that Sarakatsani law as such has had every
[198] opportunity to develop and above all to develop autonomously during this period.

This in only a negative aspect result of the way external law functions. But there is more, and it is suitable to throw light on the positive results as well.

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474 675 671 initiative, which nonetheless develops in the context of Sarakatsani society and its cultural system.

The agents of ajudication, of sanction and coercion.

578 691 The elements of the problem: daily life and therefore all the questions relating to marriage, kinship and the functioning of the family, as well as the removal of the head, the checking of accounts of the family management and of the Tséligato, claims and quarrels between members and the Tséligas, the settling of various questions pertaining to guardianship, the division of an inheritance and so forth, create and represent numerous cases in which conflicts and litigations may arise.

578 627 692 691 Now all these questions must be solved one way or another. Though the agents of ajudication are multiple they are not always obvious. The same is true for the agents of sanction and coercion who are very often identical with the former.

In our effort to determine them we note first of all that the only official, hence visible tribunal that the Sarakatsani are acquainted with is that of arbiters.

[418] [179] Of course, an appeal to the official law of the surrounding society is always possible, but the Sarakatsani do not have recourse to it. (20)

20. This appeal would constitute a violation of the principle of isolation from the surrounding society, of which the Sarakatsani are very jealous.

691 692 [602] If the litigation concerns family questions and disagreements between members of the same family, the arbiters are recruited by the parties concerned from among the oldest relatives (uncles, for example).

[474] If the dispute is between strangers (members of the Tséligato and the head, for example), each of the parties proposes as arbiter one or two Tséligas.

The sentence, always binding and without appeal, from the viewpoint is formulated and pronounced according to what is good and fair to

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691 692 627 customary law on the one hand, and ex bono et aequo on the other, according to circumstances and the case at hand.

/209/ However, the arbiters do not have any coercive powers.

Next come the family group, the Tséligato, finally surrounding society.

These groups do not form tribunals if one takes this term in its usual meaning in which the parties concerned present themselves, state their case and demand justice.

692 627 696 Nevertheless, these groups have real authority in disputes, their opinion or their attitude with regard to the adversaries already constituting a sentence. For their judgment, formulated either according to custom or spontaneously and according to the case at hand, is binding upon the person involved, inasmuch as they have means of constraint sufficient to enforce it.

It is precisely this fact which permits us to characterize these groups as agents of ajudication and to say that their opinion is a sentence.

Moreover, thay are actually empowered to execute the sentence of the arbiters.

627 696 Finally, in some disputes, the concerned individuals themselves may make decisions and themselves apply the sanction.

The cases in which they intervene are not numerous. Custom designates the beneficiaries of this ajudication and the conditions under which they must exercise it. However, custom gives them a certain latitude in action. Thus:

494 695 627 692 [686] First, the Tséligas may at any time annul his contract with one of his participants and expel him forthwith if he believes the latter has not properly fulfilled his obligations. In return, the participant expelled may then resort to arbitration that will pronounce upon the "sufficient grounds" of this expulsion. This mechanism is much like what

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takes place between the commander of a ship and the members of his crew, according to maritime law. The special and comparable conditions of the life of the Tséligato and navigation on the high seas (21)

21. K. Karabida: 'Agroticha, pp. 39 and 47.

--a life full of diverse and unforeseeable dangers which must be faced as a group, without flinching and with the means at their disposal seem to have dictated this practice.

Second: The components of an extended family (small lineages, /210/ conjugal families, adult sons) may leave the home they share if they are satisfied with the loyality of their head.

Third: Potential participants can avoid joining a Tséligato whose head does not enjoy a good reputation.

In the first and second cases the sanction is almost inevitable since the danger of non-conformity by those responsible affects the entire community, whereas in the second and third cases it is more permissive, in view of the fact that the danger affects only sub-groups and individuals.

However, these remarks would not be complete if we did not mention the interventions of the family head or of the Tséligas to settle disputes among their subjects. These interventions sometimes take the form of arbitration, sometimes of influence through the prestige of these individuals; in both cases they are ultimately upheld by the community.

Nevertheless, in order to avoid the charge that these statements are based on "petito principii" we must now prove them objectively.

If we succeed in demonstrating that the sentences reached by arbitration, as well as the judgments and opinions of groups and individuals are obligatorily imposed on those concerned, and that the latter must conform to them without fail, we shall be demonstrating at the same time that the sentences, opinions and judgments have a legal character, that therefore they are true verdicts.

Moreover, if we prove that the arbiters, the groups and the individuals,

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in their ajudication, prescribe obedience to the rules of the law, there will no longer be any doubt about their nature.

We shall approach this problem by examining arbitration.

Attempt at more detailed and precise investigation: In questioning our informants we learned that "the interested parties do not even think of disobeying the arbiters." Is this because, as E. Sidney Hartland (22)

22. Primitive Law/cited in English/, p. 138.--See also the view of Sir Henry Sumner Maine: Ancient Law/cited in English/, pp. 50-52 that "the habit of obedience which makes law obligatory among primitives--and even among those not politically organized." We shall come back to these problems somewhat farther on.

and with him W. Rivers and P. Lowie maintain, /211/ the primitive automatically obeys all the rules society imposes on him? Or rather is it a kind of social constraint conceived in the Durkheimian manner that operates here? Or, finally, does the agreement of the interested parties to submit their dispute to arbiters include at the same time an implicit promise to obey the sentence that will be pronounced? (23)

23. Similar to the compromissum of Roman law.

All these explanations are without doubt insufficient. The automatic obedience "of the primitive" is merely a fiction, convenient but without foundation, the frivolity of which has been criticized by Br. Malinowski (24) (and more recently by E. A. Hoebel) (25)

24. Moeurs et Coutumes des Mélanésiens, p. 17.

25. The law of primitive man /cited in English/, p. 20-21.

so convincingly that P. Lowie was obliged to give it up in a new edition of his work. (26)

26. Traité de Sociologie Primitive, p. 389.

The idea of constraint is very general and consequently too abstract to provide an explanation of this phenomenon. Finally, the "promise to obey" the arbiters would not have any practical value without a force to

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121 696 692 629 make sure it is fulfilled; men are always men and automatic obedience or a promise would mean nothing if carrying it out were entrusted only to the good will of those concerned.

On this point our discussions with our informants are very revealing. 696 692 629 626 (686) [494] We were told that if the person recalcitrant to the arbiters' sentence is a member of a Tséligato, no other Tséligato would ever accept his cooperation. If he is a Tséligas, he would immediately be abandoned by all the participants and labelled "destroyer of sheepfolds" (Chalassostanis) --a name used to stigmatize a disloyal or incapable head.

The consequences of such a reaction are obvious. The one who is socially isolated, rejected by his own people, can expect only social degradation, economic ruin, exile into surrounding society. This last is his only refuge. But, since, the exiled one is not adapted to the latter he will see his condition worsen from day to day. Actually, this is enough to frighten the most courageous or the most refractory.

However, relying a little more on facts, we see that the recalcitrant one can hope for two things:

/212/ First, since he is a nomad, he can move far away from the place of arbitration and seek a setting where his behavior is not known, and be accepted there.

Second, assuming that someday his new Tséligato is informed of his conduct, there is a good chance that meanwhile he has been able to develop sufficiently close and honorable relationships with the "others" so that his unfortunate past will no longer be taken into consideration. Moreover, the absence of his adversaries permits him to give his own version of events in order to justify himself.

Now it is obvious that between the possibility of the application of envisioned punishment (which is relative) and an obedience to arbiters which is absolute (the person concerned "does not even think of disobeying") there is a discrepancy. It is difficult for us to assume that a "relative" conditioning can determine absolute effects. This shows that, in the

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process of obeying, other factors intervene, and that we must discover them in analyzing this phenomenon in its totality, true to the heritage of M. Mauss. (27)

27. See M. Mauss: Essai sur le don, p. 275-276.-- It is noteworthy that Malinowski, ibid., pp. 39, 41,42, in his effort to explain the obediance of the Trobrianders to their legal customs, gives an interpretation identical to ours concerning obedience to arbiters, based on his famous "principle of reciprocity." We have explained above that this principle does not cover all of the life of law. And we shall give a more detailed critique of Malinowski's theory in one of the following sections. If we find his positions deficient it is because they are formulated according to his functionalist method which seems to us inadequate, in keeping with C. Lévi-Strauss: Introduction, p. xxxvi, who says: "Where Mauss saw a constant relationship between the phenomena as their explanation, Malinowski asks himself what they are for in order to seek a justification for them."

Every altercation between individuals is translated in actual fact into an opposition between groups. The members of the family of each interested party, bound to him by solidarity and alliance, will follow him all the more readily when disputes submitted to arbiters are of an economic order, hence handled by the head. If portions of families are set against each other in the core of the extended family or the Tséligato these groups run the danger of splitting. The principle of cooperation and solidarity is then challenged. And where, until then, peace reigned, there is threat of disorder and insecurity. Besides, the principle of the isolation of Sarakatsani from surrounding society is also endangered. For if the recalcitrant refuses to obey the arbiters, the only recourse to justice is the State, which means interference of non-Sarakatsani (formerly the occupying forces) in Sarakatsani affairs. Finally, the

629 692 183 182 696 /213/ Finally, the /213/ disobedience of arbiters means a disobedience of the custom which prescribes it. Since each partial custom is organically linked to all the others, the entire traditional cultural edifice begins to crumble.

These few consequences of disobedience to arbiters represent for the Sarakatsani a number of serious dangers. In order to avoid them it seems to us that a whole complex of reactions, influences and pressures arising from all the social forces which are affronted are set in motion for this purpose.

629 692 626 696 Under strong motivation which, in the end, is ascribable to their concern for the protection of all that is original, characteristic and essential to Sarakatsani life, individuals, sub-groups and groups, plunged into anxiety and distress, turn against the potential or actual recalcitrant, and by word, gesture and sign language, explicitly or implicitly leave him scarcely any choice. Before going on to the untimate remedy of isolation, they will bear down on him with all their might to avoid creating explosive and disastrous situations.

The recalcitrant one, in turn, is more or less aware of the pressure put upon him. His conscience has already been aroused; he is intuitive rather than reflective and extremely participative because of his firm integration in his traditional milieu. (28)

28. Margaret Mead: Cooperation and competition/cited in English/, p. 461.

(155) Moreover, his personality, molded by education which has inculcated in him respect for tradition and has developed in him the moral qualities and intellectual habits that his society demands, is definitely sensitive to influences and pressures from his associates. He therefore feels responsible for the disturbance his conduct has caused; he is well aware that everybody is waiting for him to follow the path marked out by tradition; he knows that all eyes are fixed on him; he is steeped in this suffocating atmosphere and gives way under its weight.

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627 692 627 696 Two points or view converge: microsociological and macrosociological influences and pressures, on the one hand; a molding of the personality, on the other. It is this double determinancy, "the internal and external causality" in the apt phrase of R. Bastide, (29) that is at the base of the phenomena of obedience to arbiters, which would otherwise be inexplicable.

29. R. Bastide: La causalité externe and la causalité interne, vol. XXI, C.I.d.S., pp. 77-79.

/214/ It matters little whether this drama is explicit or implicit, conscious or unconscious. The important fact is that it exists and is effective, as is shown by the infinitesimal number of cases of isolation. (30)

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30. All these methodological as well as ontological statements are drawn from the present state of research in the social sciences, which has led G. Gurvitch to speak of "total psychological phenomena" (Traité, vol. II, pp. 333-338). Unfortunately this concept is still insufficiently developed; it is drawn from many different works among which we cite the following: M. Dufrenne: La personalité de base.--R. Bastide: Sociologie et Psychoanalyse.--C. Lévi-Strauss: Anthropologie Structurale.--H. Wallon: Les origines du caractère chez l'enfant.--R. Benedict: Echantillons de civilisations.--R. Linton: The Science of man /cited in English/ and Les fondements culturels de la personnelité.--A. Kardiner: The individual and his society /cited in English/.--T. M. Newcomb: Social Psychology/cited in English/.--O. Klineberg: Psychologie sociale.--A. Kroeber: Anthropology today/cited in English/.--G. Gillin: For a science of social man/cited in English/, etc.

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626 627 692 But before we proceed further, certain questions arise: this mechanism of imposing certain rules of behavior, in what way does it

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626 627 differ from what we call "sanctions of ethnic opinion or simple disparagement?" (31)

692 31. In the words of P. Fauconnet: La responsibilité, p. 12.

Why should we accept the fact that this same mechanism derives from law and not from the mechanism of enforcement common to all social regulations?

The reply to these two questions is the same. It is the absence of any possibility of escape, the need for all individuals to conform absolutely, the strictness of obligation which differentiates the facts described from all other kinds of sanctions. There is also the nature of the "authority" which underlies these rules and which is clearly distinguished from that of other regulations.

* * * *

627 692 Recourse to arbitration is infrequent. This does not mean that disputes do not arise, but merely that in addition to arbitration there are other procedures leading to their settlement. These are adjudication by the family, the Tséligato and Sarakatsani society, of which we have spoken briefly when pointing out that these entities have a voice in the disputes.

Now their comments in cases of conflict may, in a way, take on the force of law and commit the persons concerned to follow a definite conduct which represents the solution of the conflict.

/215/ Their means of action are the same as those that give sanction to the decision of arbiters. However, although in the latter case the groups act in support of an arbitrated sentence, when they give their opinion they are acting on their own account.

181 671 182 That is not all. The observer of Sarakatsani life is often struck by the conformism of our herders. They follow, or at any rate they seem to follow, to the letter, all the regulations derived from their law--which brings us back to the statements of Rivers and Hartland cited above. This fact is very significant. For it shows another legal function of the

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627 decided upon and carried out by individuals. They are variants of the
686 major sanction, namely social isolation, the nature and importance of
689 which we have pointed out. With respect to the removal of the head, we have nothing to say since the facts speak for themselves.

629 After this general survey we may conclude:

692 First, that it is certain that arbiters, groups and individuals
182 determined by circumstances or by a regulation, actually perform the
626 legal functions set forth at the beginning. They enforce and demand respect for the order dictated by the customs and general ideas of their society. The first two /arbiters and groups/ do so by relying on the group and its dynamics; the individuals close /by means of/ their own specific functions recognized by the group and supported by it when they fulfill them.

Second, that the rules of organization and functioning of Sarakatsani groups, stated above, their customs as well as what we have called "their general social ideas" take the place of rules or prescriptions of law. For, depending on the cases and the circumstances, conformity to them is required. And they are followed as a result of the mechanism of "sanction-coercion," either visible or disguised.

Sarakatsani society therefore has law and agencies of law. Though they are not always apparent, they nonetheless exist.

673 CRIME AND MISDEMEANORS AMONG THE SARAKATSANI.

674 The Sarakatsani consider a certain number of acts as crimes or
(128) misdemeanors. We propose in this section to describe them, as well as to indicate the punishments associated with them and the means of which they are carried out.

Homicide and assault.

682 Respect for life and for the integrity of the body is a rule the violation of which leads to the death of the culprit.

/217/ This rule must not be considered identical with that of the penal code. A look at the situations in which it is applied will suffice

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[113] L'originalité des droits coutumiers, p. 487.--
P. Roubier: Théorie générale du Droit, p. 163 f.,
etc.

For it should be emphasized that the law of the Saraktsani--this aspect of social life which Malinowski (35) has judiciously called "the

35. Ibid., p. 45.

aspect of legality" --must be regarded as a sphere only half of which is visible. To define it, therefore, requires a task of specific identification. This remark applies to all its manifestations.

The sources of this law are: the conjugal family and the extended family, the Tséligato, Sarakatsani society, arbiters and individuals.

Under the term "source" we include the groups and individuals whose activity show's creativity in matters of law (setting forth rules to be followed, adjudication, sanction, coercion).

[596] Seen from the angle of legislation, the most notable of these sources is the extended family. For from it emanate all the rules concerning family life, social organization, the system of ownership and the manner of economic exploitation.

[594] [596] The conjugal family is regulated in terms of the life of the extended family and according to its authority.

[474] [596] The Tséligato develops a zone of legislative activity which is peculiar to it and is limited to relations between the Tséligas and the /224/ participants; for all the rest it has recourse to regulations pertaining to the extended family.

Sarakatsani society, as a total unit, merely does not issue them.

[692] [596] The arbiters, as legislators, enjoy an autonomy which is only apparent, since the rules that they apply must be compatible with the general application of laws, wherein the extended family plays a primary role, as well as with the Sarakatsani cultural system which is, above all, the work of this type of family.

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These groups create general rules by establishing custom and by issuing spontaneous and ad hoc rules for cases not provided for, while the arbiters introduce (always as legislators) individualized, spontaneous and ad hoc rules.

Individuals do not participate in the legislative function.

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The agents of Sarakatsani law are the same as its sources. However, they also include individuals, or rather specific individuals, according to their rank and status. Sources and individuals become agents the moment they apply established or spontaneous law by particularizing it in various concrete cases. However, aside from the arbiters and the individuals in question, other agents are not apparent because they are not specialized, their legal functions merging with their other functions.

The moment law is applied, the question of responsibility arises quite naturally. It falls equally on groups and individuals, depending on the case. The strong social integration of the Sarakatsani does not negate the responsibility of individuals. The latter see themselves called upon to assume it should the occasion arise.

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As for sanction, this is generally part of the reaction which each society manifests with respect to certain behavior that does not conform to its principles. It therefore constitutes above all a social manifestation. Coercion presents the same character. It involves also another part of these same reactions.

Theoretically speaking, sanctions are divided into: first, those provided for, subdivided depending on whether they are organized and unorganized /sanctions/, applied by special agents or not; /225/ second, spontaneous /sanctions/ that is to say, relevant to a judgment "after the event" and set forth "from a feeling of what is good and fair." These can likewise be divided into organized or non-organized; 3rd, /sanctions/ directly imposed by physical force; 4th, /sanctions/ expressed in criticism or by attitudes conveyed in the behavior of the members of the corresponding society toward offenders.